

REMARKS

This is in response the Office Action of November 2, 2007. Claims 1 and 3-35 are pending in the present application, wherein claims 2 and 9-35 were previously cancelled or withdrawn. Claim 36 is new.

In the Office Action, the Examiner (1) rejected claims 1 and 3-8 on the ground of non-statutory obviousness-type double patenting over claims 1, 4, 5 and 6 of U.S. Patent No. 6,709,412 to Vandlik et al., but indicated that these claims would be allowable upon submission of Terminal Disclaimer, and (2) indicated that the drawings filed on January 26, 2004 are accepted.

At the outset, Applicants wish to thank the Examiner for considering the references cited on the Information Disclosure Statement filed October 25, 2007.

Claim Amendments

Applicants turn first to the amendments to the pending claims. In particular, Applicants have amended independent claim 1 to eliminate the term "fibrous" as it relates to the in line filter, and have replaced it with the term "leukocyte removal". It is respectfully submitted that this change does not negatively impact patentability over the prior art.

Applicants have added new claim 36, which is dependent on claim 1. Claim 36 is directed generally to the subject matter being eliminated from independent claim 1, including the feature of a "fibrous" filter medium.

In addition, Applicants have made other non-substantive amendments to correct the dependency in claims 3, 5, 6, 7 and 8 to reflect the fact that claim 2 has been canceled.

Claims 9-35 Have Been Cancelled

By this Amendment, Applicants are also cancelling claims 9-35, without prejudice. Claims 9-35 were previously identified as "withdrawn". Applicants reserve the right to pursue the subject matter of these claims in a continuing application. Applicants submit that the cancellation of these claims places the present application in condition for allowance.

Double Patenting

Claims 1 and 3-8 were rejected on the ground of obviousness-type double patenting over claims 1, 4, 5 and 6 of U.S. Patent No. 6,709,412 to Vandlik et al. A non-statutory double patenting rejection may be overcome by the filing of a Terminal Disclaimer. See MPEP § 804.02. Applicants note that the present application and U.S. Patent No. 6,709,412 were, at the time the invention claimed in the present application was made, owned by Baxter International Inc. The assignment of this application from the inventors to Baxter International Inc. is recorded at Reel 016856/Frame 0456. A Terminal Disclaimer based on the cited reference is being submitted herewith. Applicants believe that submission of this Terminal Disclaimer places this application in condition for allowance.

Remarks Regarding Reasons for Allowance

In the Office Action, the Examiner indicated that the prior art of record, including US 5,649,903 to Deniega and US 5,591,337 to Lynn, teach a blood processing system substantially as claimed by Applicants including a flexible leukofilter, but fail to disclose a separate restraining structure disposed about the flexible filter, along with other steps and limitations of the claims.

However, to make the record clear, Applicants respectfully submit that Deniega does not describe a flexible leukocyte filter as the Examiner seems to suggest in the reasons for allowance. The Examiner's comment in the previous Office Action, mailed May 9, 2007, is clearer. There, the Examiner acknowledged that "Deniega fails to disclose that the leukocyte filter comprises two flexible housings with a fibrous filter medium...as claimed by Applicant." See Office Action, page 4.

Supplemental Information Disclosure Statement

Applicants are filing a Supplemental Information Disclosure Statement with this Response.

Conclusion

For the reasons set forth above, Applicants respectfully submit that the pending claims are allowable. Accordingly, the withdrawal of the rejections and reconsideration and allowance of the claims are respectfully requested.

Respectfully submitted,

Date: 3/3/2008

By: Gary W. McFarron
Gary W. McFarron
Registration No. 27,357
COOK, ALEX, McFARRON, MANZO
CUMMINGS & MEHLER, LTD.,
200 W. Adams Street, Suite 2850
Chicago, IL 60606
Phone: (312) 236-8500
Fax: (312) 236-8176